



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Century 21 Amos Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This review hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has the Landlord substantiated the costs claimed?

Is the Landlord entitled to unpaid utilities?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on March 28, 2015 and ended on July 8, 2016. Rent of \$900.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. The tenancy agreement provides that all utilities are the responsibility of the Tenant. No forwarding address in writing was provided by the Tenant.

The Landlord states that while the Tenant was present for the move-in inspection and was invited to attend the inspection the Tenant did not accompany the Landlord. The Landlord states that a report was completed and a copy would have been provided to the Tenant by email from the Landlord's office staff. The Landlord states that the provision of a copy of an inspection report is standard policy followed by the Landlord. No copy of any email with an attached report to the Tenant was provided as evidence.

The Tenant states that she accompanied the Landlord's daughter for the move-in inspection and that the daughter took photos of the unit. The Tenant states that she saw that a form was filled out but no copy was ever received. The Tenant states that the unit was a mess at move-in, with damages and mold.

The Landlord states that the Tenant was offered an opportunity to conduct a move out inspection and that while the Tenant was present the Tenant did not accompany the Landlord from room to room. The Landlord states that a report was completed and a copy was provided to the Tenant. The Tenant states that she did attend the move-out inspection and knows that a report was completed but does not recall if a copy of the move out report was received.

The Landlord states that the entire unit was left unclean by the Tenant. The Landlord claims \$270.00 as an estimate for washing all the walls in the unit. The Landlord states that because the tenancy was over a year the walls were required to be washed at move-out. The Landlord states that the walls were washed by a cleaning company but that the Landlord has no idea when they were cleaned or how much they were paid. The Landlord provided no invoice for the costs claimed.

The Landlord claims \$81.00 as the costs for cleaning the dining room, stove, bathroom cabinet, and basement floor and basement fridge. The Landlord claims a cost of \$27.00 per hour for the cleaning. The Landlord claims \$318.00 for carpet cleaning. No invoice was provided for any of the cleaning costs claimed. The Landlord states that he has no

idea when the unit was cleaned or how much was paid for the cleaning. The Landlord states that the cleaning was done by a cleaning company.

The Landlord states that the Tenant left the kitchen linoleum damaged and claims \$50.00. The Landlord states that no repairs were made to the linoleum. The Landlord states that he has no idea of the age of the flooring. The Landlord states that he arrived at the amount claimed based on what he felt. The Landlord states that the next tenant paid the same rental rate as the Tenant.

The Landlord states that a bar from the fridge door was missing and was replaced. The Landlord states that he has no idea of the costs for the replacement and claims an estimated \$75.00 for the supplies and labour.

The Landlord states that the Tenant failed to leave a kitchen sink plug. The Landlord states that it was replaced and that \$5.00 was probably paid for each of the 3 replaced plugs. The Landlord claims \$20.00.

The Landlord states that the Tenant left a torn screen in one of the bedrooms and claims \$50.00 for its replacement. The Landlord provides no receipts or invoices for this cost.

The Landlord claims \$140.00 for the labour to repair vertical blinds, and replacing a closet door. The Landlord claims a cost of \$35.00 per hour for repair labour. It is noted that the Landlord claims washing cupboards, fridge in the repairs costs and includes these items in the \$140.00 claimed. The Landlord states that this was done in error and should properly be in the cleaning category of costs. The Landlord provided no invoices, receipts or bills for any of the labour or supply or material costs in relation to any of the claims for repairs and replacements.

The Landlord states that he does not know if the fridge and stove are on wheels. The Landlord states that no photos of the walls were provided. The Landlord provided faxed copies of photos of the unit.

The Tenant states that she left the unit spotless, washing the cupboards and appliances. The Tenant states that the fridge and stove were not on wheels and that the walls of the unit had very old paint that could not be cleaned or spot wiped. The Tenant states that the wall paint was likely 10 to 15 years old and was "very grungy". The Tenant states that at move-in the walls had holes in them. The Tenant states that she asked the Landlord on several occasions to paint the walls or to give the Tenant permission to paint the walls but the Landlord refused. The Tenant states that the chains on the blinds were broken at move-in. The Tenant states that the kitchen flooring had large gouges and stains at move-in and was very old. The Tenant states that the fridge was missing a bar at move-in. The Tenant states that at move-in there were no screens on the windows referred to by the Landlord and that they had been painted shut. The Tenant states that her uncle provided the screens that the Landlord claims are damaged. The Tenant states that there were never any sink plugs and that she had to purchase her own during the tenancy for \$2.00 each. The Tenant states that she took them with her at move out. The Tenant states that she steam cleaned the carpets.

The Landlord states that the Tenant owes an estimated \$125.00 for the water bill. The Landlord did not provide any bill for this claim. The Tenant states that she has never received any bill for the water.

The Landlord states that the Tenant agreed to the retention of the \$450.00 for cleaning and damage to the unit. The Tenant states that she agreed that the Landlord could retain the security deposit of \$450.00 as the Landlord was yelling and belligerent towards her and that the Landlord bullied the Tenant into agreeing to this retention. The Tenant states that she thought she was agreeing for the Landlord to retain this money in lieu of staying in the unit into July 2016.

At this point the Landlord stated that he felt that he was not being allowed to fully express himself. It is noted that during the hearing the Landlord was stopped on occasion from providing irrelevant evidence. It was explained to the Landlord that irrelevant evidence was not allowed given the limited time available for the hearing and the need for expediency. The Landlord was referred to the Rules of Procedure that gives the arbitrator authority to conduct the hearing and was informed that his evidence was liberally sprinkled with irrelevant evidence. The Landlord was informed that if this hearing was to conclude within the allotted time and not be adjourned to another date, it was necessary to ensure that the Landlord not continue to ramble or insist on providing irrelevant evidence. The Landlord stated that he considered this direction a threat and that he was therefore terminating his call. The Landlord then disconnected from the conference call.

The Tenant states that the Landlord exhibited similar behavior during the tenancy and that the Landlord was extremely volatile and aggressive with the Tenant at move-out. The Tenant states that at move-out the Landlord stormed into the unit and started pulling things out yelling at the Tenant "You need to get out". The Tenant states that the Landlord's behavior made it difficult for the Tenant to attend each room with the Landlord.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. It is noted that the faxed copies of photos provided by the Landlord are singularly unhelpful due to lack of clarity. Notwithstanding this lack of evidence of the state of the unit at move-out,

given the lack of bills for the water bill or for any of the costs claimed in relation to damages and cleaning to the unit I find that the Landlord has not substantiated these costs and I dismiss the claims.

The Act requires a tenant to attend both a move-in and move-out inspection where offered such an inspection. Although the Landlord states that the Tenant did not attend the move-in inspection the Landlord acknowledges that the Tenant was present for the inspection and did not dispute that the inspection was not conducted with the Landlord. I therefore prefer the Tenant's direct evidence and find that that the Tenant did attend the move-in inspection with the Landlord's daughter. Given the Landlord's behavior at the hearing I accept the Tenant's evidence of the Landlord's difficult behavior at move-out that stopped the Tenant from fully participating in the move-out. For these reasons and as the Landlord's rights to claim against the security deposit was already extinguished prior to move-out, I find that the Tenant's acts to not attend each room inspection are of no consequence in relation to the Tenant's right to return of the security deposit being extinguished.

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Given the Tenant's evidence that no copy of a move-in report was received by the Tenant and as the Landlord provided no direct evidence of providing such a copy and no supporting evidence that his employees sent the Tenant a copy by email I find that the Landlord has failed on a balance of probabilities to prove that the Tenant was ever provided with a copy of the move-in report. As a result I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in.

Section 38(5) of the Act provides that the right of a landlord to retain all or part of a security deposit or pet damage deposit where a tenant agrees in writing to such retention does not apply if the liability of the tenant is in relation to damage and the

landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24. Based on the Landlord's evidence that the Tenant agreed to the Landlord's retention of the security deposit for damages to the unit and as the Landlord's right to claim against the security deposit was extinguished at move-in I find that the Tenant's agreement for the retention is of no effect.

As none of the Landlord's claims have been successful I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety. As the Landlord has not been found entitled to retain any monies from the security deposit I find that the Tenant is entitled to its return within 15 days of provision of its forwarding address, if that forwarding address is provided within one year of the date of the end of the tenancy. Should the Landlord fail to return the security deposit as required, the Tenant is at liberty to seek return of double the security deposit.

### Conclusion

The Landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 24, 2017

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Residential Tenancy Branch